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OCTOBER 28, 1997

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**Senator Bob Bennett
Opening Statement
Senate Committee on Labor, Health and Human Resources
Hearing -- Medical Records Privacy**

I would like to thank Chairman Jeffords for holding this hearing and for taking a leadership role on the important issue of protecting personal identifiable health information. I am here today to state for the record that I believe that the Congress needs to step forward and address the issue of safeguarding personal health information. I have been involved in this issue for the last three years and I must say that I feel stronger and more determined today than I have ever felt about the need for legislation.

I want to express my appreciation to Senator Leahy for his efforts on this issue. He was a cosponsor of S. 1360 in the 104th Congress. I appreciated the opportunity to work with him in the past and know that we will continue to work together in the future. He has worked on this issue for many years and I appreciate his leadership and friendship.

I can think of few other areas in our lives that are more personal and private than is our medical history. Each of us has a relationship with our doctors, nurses, pharmacists and other health care professionals that is unique and privileged. These providers know things about us that we may choose not to tell our spouses, children, siblings, parents or our closest friends. While our medical records may contain nothing out of the ordinary, to us these records contain information that we would rather the world not know. I believe we have the right to expect that they will be handled with great dignity, discretion and care.

Most Americans currently believe that their health information is protected and safeguarded by federal law from inappropriate or unauthorized uses. This is simply not the case. Comprehensive protection of our health information is an expectation that is yet to be guaranteed. I believe that Congress needs to act in a bipartisan manner to resolve this problem and I hope that I can play some role in this effort.

Patients should be assured that the treatment they receive is a matter between them and their doctor, regardless of whether it's a yearly physical, psychiatric evaluation, plastic surgery or cancer treatment. The majority of patients agree that treatment and billing are the two appropriate uses of medical records. Patients should have the right to limit disclosure of medical records for purposes other than treatment and billing. A separate authorization form(s) should be required for additional authorizations. Further, providers should be required to keep a record of those to whom they disclose information.

In the hospital, most patients are unaware that their records are accessible to almost any health care provider walking into their room or almost any hospital employee with a computer who can gain access to the hospital's computer system. There are scores of doctors, nurses and other health care providers who refuse to be treated in the hospital where they provide care because they know that with a stroke of a keyboard their colleagues will know why they are in the hospital and how they are being treated.

One of the most important issues that needs to be addressed is improving the access an individual has to their own medical record. It is difficult to understand why individuals have difficulty gaining access to their own medical records. There are no federal laws regarding access to and correction of medical records. Only a few states allow patients the right to review and copy their medical records. If the medical record is incorrect, the patient may never know it and thus not have the opportunity to address any errors.

Currently, the only protection of medical records is under state laws. At this time there are approximately 34 states with 34 different laws to protect these records. Only 28 states provide patients with access to their medical records. Given the transient nature of our society and the fact that more than 50 percent of the population live on a state border, it is vital that we provide a national standard for the protection of medical records.

As our health care system grows more complex and sophisticated having one standard for safeguarding and protecting personal health information would simplify the business of health care, reduce the cost of complying with 50 state standards and allow the continuation of research that will improve the efficiency of our health care system. I have come to the conclusion that there is a significant need to preempt state laws that govern the safeguarding of medical records. As a Republican senator that believes in states' rights I do not come to this conclusion hastily. After thoughtful consideration I believe that a federal law is warranted given that health care services and information flow freely over state borders. However, I want to emphasize that legislation should in no way impede the state's responsibilities and abilities in the area of public health. The state should continue to have a strong public health oversight role. I do not in any way want to lessen their role.

I wanted to take a moment to mention Secretary Shalala's recent recommendations in this area. I have reviewed Secretary Shalala's recommendation and for the most part I think she has done a good job outlining the issues. Secretary Shalala laid out five principles: Boundaries, Security, Consumer Control, Accountability, and Public Responsibility. I want to commend the Secretary for her work. Under her direction the department held a number of hearings and listened to hundreds of witnesses. In the end, her recommendations are similar to my draft legislation with two exceptions: state preemption and law enforcement. I wish the Secretary had taken a stronger position in these two areas. As I stated previously, I view preemption of state medical records laws to be very important. I also believe it is critical that we require our law enforcement officials to go through the subpoena or warrant process prior to obtaining access to medical records. Furthermore, law enforcement officials need to specify the information they seek and indicate how that information is to be used. I understand the unique nature of the role of law enforcement officials and believe we can come to a reasonable compromise regarding the needs of the individual and the needs of the law enforcement

community.

Since the introduction of S. 1360 in the 104th Congress I have received many excellent comments and suggestions from diverse groups. I have included many of those suggestions in my draft legislation that I released earlier in October. I fully intended to introduce legislation this year but I am convinced for several reasons that it would be better for me to introduce my legislation early next year. In the mean time, I suspect that my draft legislation will receive appropriate review from a wide range of groups and I welcome their suggestions and comments on how this legislation can be improved. This is a complex issue that requires careful consideration and I have no doubt that there will be a number of changes made prior to introduction.

I do plan to introduce this legislation in early 1998. I hope that the Chairman would be willing to hold a hearing on my legislation at his earliest convenience and that he would work with me to move this legislation through the committee.

I hope to work with Chairman Jeffords, members of this committee, Senator Leahy, my other Senate colleagues and Secretary Shalala closely on this issue. I am hopeful we can craft reasonable legislation that provides the protection that we need. Thank you.